

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-22736-CIV-WILLIAMS/REID

THE SMILEY COMPANY SPRL,

Plaintiff,

v.

THE INDIVIDUALS, PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A,”

Defendants.

**ORDER GRANTING
MOTION FOR ALTERNATIVE SERVICE**

This cause is before the Court on Plaintiff’s *Ex Parte* Motion for Order Authorizing Alternate Service of Process on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (the “Motion”). [ECF No. 7]. For the reasons stated herein the Motion is **GRANTED**.

Plaintiff, The Smiley Company SPRL, seeks an order granting alternative service of process on Defendants, the Individuals, Partnerships, and Unincorporated Associations Identified in Schedule “A” attached to the Complaint (collectively “Defendants”), all of which, upon information and belief, are residing and/or operating outside of the United States. Plaintiff alleges that Defendants have established Internet-based businesses and utilize electronic means as reliable forms of contact. Therefore, Plaintiff seeks to serve Defendants by both e-mail and by website posting.

LEGAL STANDARD

Federal Rule of Civil Procedure 4(f)(3) permits a district court to order an alternate method for service to be effected upon foreign defendants, provided it is not prohibited by international

agreement and is reasonably calculated to give notice to the defendants. See *Brookshire Bros. v. Chiquita Brands Int'l, Inc.*, No. 05-CIV-21962, 2007 WL 1577771, at *2 (S.D. Fla. May 31, 2007) citing *Prewitt Enters., Inc. v. Org. of Petroleum Exp. Countries*, 353 F.3d 916, 921, 927 (11th Cir. 2003).

“Constitutional due process requires only that service of process provide ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Chanel, Inc. v. Zhixian*, No. 10-CV-60585, 2010 WL 1740695, at *3 (S.D. Fla. Apr. 29, 2010) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

“A party seeking authorization for alternate service under Rule 4(f)(3) need not attempt service by those methods enumerated under subsections (f)(1) and (f)(2), including by diplomatic channels and letters rogatory, before petitioning the Court for 4(f)(3) relief.” *Sec. & Exch. Comm’n v. Palm House Hotel, LLP*, No. 18-CV-81038, 2018 WL 9849603, at *1–2 (S.D. Fla. Nov. 7, 2018) (citation omitted).

“The decision to accept or deny service by alternate means pursuant to Rule 4(f)(3) falls soundly within the discretion of the district court.” *Id.*

DISCUSSION

For the following reasons, the Court finds that alternative service of process under Rule 4(f)(3) is warranted here. First, the Hague Convention does not specifically preclude service via e-mail and website posting. Further, “[w]here a signatory nation has objected to the alternative means of service provided by the Hague Convention, that objection is expressly limited to those means and does not represent an objection to other forms of service, such as e-mail or publication.” *Karsten Mfg. Corp. v. Store*, No. 18-61624-CIV, 2018 WL 8060707, at *1 (S.D. Fla. July 26,

2018) (citation omitted). “A court acting under Rule 4(f)(3) therefore remains free to order alternative means of service where, as here, a signatory nation has not expressly objected to those means.” *Id.* Accordingly, the requested service methods are not prohibited by international agreement.

Second, Defendants use at least one known and valid form of electronic contact to conduct their Internet-based businesses, and Plaintiff has created a website for the sole purpose of providing notice of this action to Defendants, the address to which will be provided to Defendants’ known e-mail accounts and onsite contact forms. Therefore, service via e-mail and through posting on a designated website is “reasonably calculated, under all circumstances, to apprise [Defendants] of the pendency of the action and afford them an opportunity to present their objections.” *See Brookshire Brothers, Ltd.*, No. 05-CIV-21962-COOKE, 2007 WL 1577771, at *1 (S.D. Fla. May 31, 2007). Thus, the Court will exercise its discretion to allow service on the Defendants through e-mail and website posting.

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff’s Motion [ECF No. 7] is **GRANTED**;
2. Pursuant to Rule 4(f)(3), Plaintiff is permitted to serve the Summons, Complaint, and all filings in this matter upon each Defendant in this action:
 - a. via e-mail by providing the address to the Plaintiff’s designated serving notice website to the Defendants via the e-mail accounts provided by that Defendant as part of the data related to its website or e-commerce store, including customer service e-mail addresses and onsite contact forms, or via the e-commerce marketplace platform for each of the e-commerce

stores. *See* Schedule “A” attached to the Plaintiff’s Complaint, which lists the Defendants’ Seller IDs and associated e-commerce marketplace platform; and

b. via website posting by posting copies of the Summonses, Complaint, and all filings and discovery in this matter on the Plaintiff’s Website appearing at the URL <https://www.dropbox.com/scl/fo/lgb047hd2h1zx3nhoth45/h?dl=0&rlkey=kq0i48u2ul1oe5em5raiuhjc8>.

DONE AND ORDERED in Chambers at Miami, Florida this 10th day of July 2023.



LISETTE M. REID
UNITED STATES MAGISTRATE JUDGE

cc: All Counsel of Record